

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Post-Incentive Auction Transition)	MB Docket No. 16-306
)	
Expanding the Economic and Innovation)	GN Docket No. 12-268
Opportunities of Spectrum Through)	
Incentive Auctions)	

REPLY COMMENTS OF SINCLAIR BROADCAST GROUP

Sinclair Broadcast Group, Inc. (“Sinclair”) hereby submits these reply comments in response to the Media Bureau’s September 30, 2016, Public Notice¹ regarding the post-Incentive Auction transition scheduling plan. Though most commenters echo Sinclair’s commendation of the Commission for developing a high-level plan to facilitate repacking and to set relative priorities, many commenters also offer other suggestions for improvements and identify significant concerns. Sinclair reiterates the need for speed in stabilizing the broadcasters’ relocated infrastructure but to do so realistically by adopting many of the suggestions from the commenters.

The Plan Must be More Flexible, Anticipate and Provide for Delays, and Acknowledge That a Full Transition of all Stations Within 39 Months is Unlikely to Occur. Like Sinclair, many commenters² acknowledge and appreciate the effort that the Incentive Auction Task Force,

¹ *Incentive Auction Task Force and Media Bureau Seek Comment on Post-Incentive Auction Transition Scheduling Plan*, Public Notice, MB Docket No. 16-306, GN Docket No. 12-268, DA 16-1095 (Sept. 30, 2016).

² *See, e.g.*, Comments of the National Association of Broadcasters, MB Docket No. 16-306 at i (filed Oct. 28, 2016) (“NAB Comments”); Joint Comments of California Oregon Broadcasting, Inc., *et al.*, GN Docket No. 12-268 at 2 (filed Oct. 31, 2016) (“California Oregon Broadcasting Comments”).

Media Bureau and related offices have invested in producing the phased repacking plan. But two major and somewhat overlapping themes are apparent from the comments. First, the plan is too rigid. In attempting to hew to the arbitrary 39 month transition timeline the Commission adopted for the transition, it assumes conditions that are better than ideal, including the flawless performance of all stakeholders, consistently good weather across the country for three consecutive years, no serious accidents or acts of God, and the timely cooperation of hundreds of third parties (including governments) that are likely indifferent to the Commission's own priorities. The plan should be revised to acknowledge or account for a variety of factors – most beyond the control of the Commission and affected broadcasters – that experience shows are certain to cause significant delays in an unknown number of cases.

Second, given these inevitable delays, the simultaneous transition of 1,000 or more television stations cannot be accomplished within 39 months of the date on which new channel assignments are issued. The Commission should acknowledge this and plan appropriately rather than proceed based on a fiction. By failing to acknowledge and expressly provide for delays, the Commission is setting up a process that will take much longer than one that starts with a candid acknowledgement of what is possible. Without a plan for the inevitable failures, any significant failure is likely to cascade into a sequence of additional and more significant problems over time. The Commission should reassess the repacking plan to build in an allowance for such failures and a process for addressing them. And as some commenters observed, the Commission should clarify exactly what the impact of various failure scenarios will be.³

³ See, e.g., Comments of Cordillera Communications *et al.*, MB Docket No. 16-306 at i (filed Oct. 31, 2016) (“Cordillera Comments”). Cordillera asks the Commission to explain what happens if stations in a phase are unable to meet their construction deadlines. Are they required to go dark while downstream stations continue with the transition, or does the entire linked chain adjust timing to accommodate the upstream slippage? The Commission's insistence on maintaining the fiction that the transition can be completed in 39 months is perhaps causing it to avoid confronting such perplexing questions. Yet they must be addressed, with the knowledge that all five Commissioners testified that stations will not be taken off the air as a result of repacking. *Id.*; Hearing on Oversight of the FCC,

Commenters identify a wide range of factors beyond the control of broadcasters that may or are very likely to introduce delays in many cases. Many commenters observe that the plan ignores the significant adverse impact weather can have on the work of repacking.⁴ Many also cite the vagaries of local zoning and other necessary approvals.⁵ The Public Broadcasting Service, the Association of Public Television Stations, and the Corporation for Public Broadcasting admonish the Commission to consider the impact of state procurement requirements, which are mandatory for some public stations.⁶ AT&T notes that the plan simply assumes Mexican stations will have transitioned before the phase completion date of the first transition phase.⁷ In addition to factors like weather and those that depend on the actions of third parties that are not stakeholders in the repacking process (zoning offices, state procurement officers, the FAA, Mexican stations, *etc.*), the commenters cite many other factors that a broadcaster cannot directly control but which nevertheless could prevent the broadcaster from completing its transition according to its assigned phase. These include RF and other problems

U.S. House of Representatives, Subcommittee on Communications and Technology, Committee on Energy and Commerce at 133-34 (Nov. 17, 2015) *available at* <http://docs.house.gov/meetings/IF/IF16/20151117/104195/HHRG-114-IF16-Transcript-20151117.pdf>.

⁴ *See, e.g.*, Comments of The E.W. Scripps Company, MB Docket No. 16-306 at 3 (filed Oct. 31, 2016) (“Scripps Comments”).

⁵ *See, e.g.*, California Oregon Broadcasting Comments at 11-12; Comments of American Tower Corporation, MB Docket No. 16-306 at 8-9 (filed Oct. 31, 2016) (“American Tower Comments”) (urging the Commission to recognize that local zoning authorities, state historic preservation officers, and tribal historic preservation officers have limited resources with which to process repacking-related applications).

⁶ Comments of the Public Broadcasting Service, America’s Public Television Stations, and the Corporation for Public Broadcasting, MB Docket No. 16-306 at 2 (filed Oct. 31, 2016).

⁷ Comments of AT&T, MB Docket No. 16-306 at 6 (filed Oct. 31, 2016).

arising at antenna farms,⁸ constraints of fully loaded towers,⁹ unavailability of sufficient tower crews,¹⁰ and other conditions.

For all of these reasons, many commenters (including those representing views of broadcast and wireless industry stakeholders) argue that flexibility is key to the success of the repacking process. T-Mobile cautions the Commission to “avoid rigid assumptions about resource restraints and transition agility” and allow for flexibility.¹¹ The NAB observes that the final plan must account for foreseeable and unforeseeable developments and be capable of rapid adjustment.¹²

Sinclair agrees with these commenters. The only certainty regarding the phase assignments is that many stations will be unable to complete their work on schedule, and those that cannot will affect downstream stations. The failure to anticipate and have a process for accommodating those changes is the biggest single flaw in the plan. The plan cannot succeed if it does not anticipate that many, many adjustments will be needed. If there is no plan to accommodate those adjustments in place before repacking starts, they must be accommodated

⁸ Cordillera Comments at 11-12.

⁹ *Id.* at 11; Comments of Block Communications, Inc., MB Docket No. 16-306 at 5-6 (filed Oct. 31, 2016) (“Block Comments”).

¹⁰ Several parties raise concerns about the Commission’s assumption that enough skilled tower crews will be available. *See, e.g.* Comments of FDH Velocitel, MB Docket No. 16-306 at 1 (filed Oct. 31, 2016) (“Stainless Tower Comments”); American Tower Comments at 9. We note especially the comments of Stainless Tower which states, among other things, that the Commission’s estimates of the time needed to do tower work are “severely understated.” Stainless warns that 39 months is unrealistic and putting pressure on tower crews to work long hours puts those workers at risk, particularly since tower crews are still diminishing and re-staffing of inexperienced workers will exacerbate the problem. Stainless Tower Comments at 3. American Tower warns that many crews that are not qualified for complex sites – including newer hires with less experience – will not be available full time throughout the transition to work on less complex broadcast sites, as many of those will be engaged in work on wireless sites. *See* American Tower Comments at 7-9. Importantly, broadcasters must rely on highly specialized RF consulting engineers, the ranks of which are limited and will necessarily be stretched to provide recommended actions by all broadcasters that may be required to relocate facilities. *See* Stainless Tower Comments at 2.

¹¹ Comments of T-Mobile USA, Inc., MB Docket No. 16-306 at 2-3 (filed Oct. 31, 2016).

¹² NAB Comments at ii.

nonetheless, and almost certainly with less efficiency than if a process for adjustments was in place.

Concomitant with planning for delays, the Commission should reject comments urging the Commission to judge requests for waivers and extensions of time strictly. CTIA, for example, argues that such requests should face a “high bar” and urges the Commission to disfavor requests that would “delay or disrupt the transition.”¹³ And even while acknowledging its skepticism that the 39 month timeframe is realistic, AT&T similarly argues that requests for deadline waivers should be subject to a “heavy burden of proof”.¹⁴ But it would be nonsensical, not to mention inequitable and contrary to the Spectrum Act, for the Commission to establish a repacking schedule that it is certain many stations cannot meet, and yet refuse relief to those stations that fall short. The burden of a waiver showing should be inversely proportional to how realistic the phase deadlines are. If the Commission proceeds with a 39 month assumption, it is inevitable that many stations will miss their phase completion dates through no fault of their own, and many of these will impact many other downstream stations, preventing them from achieving their own deadlines. Stations being repacked have gained nothing from the auction. If the Commission establishes unrealistic phase completion dates, it must be prepared to liberally grant waivers.

Many commenters offer useful suggestions for speeding up the overall transition process. Many (if not most) commenters urge the Commission to relax the prohibited communications rule to permit broadcasters and forward auction winners to communicate for transition planning

¹³ Comments of CTIA, MB Docket No. 16-306 at 12 (filed Oct. 31, 2016); *see also*, Comments of the Competitive Carriers Association, MB Docket No. 16-306 at 10 (filed Oct. 31, 2016) (“Competitive Carriers Association Comments”) (requests for waiver should show that they will have little or no impact on the phase assignments or transition schedule).

¹⁴ AT&T Comments at 4.

purposes after the final stage rule has been satisfied.¹⁵ Sinclair agrees with those commenters. Others recommend permitting stations to channel share, strictly on a voluntary basis, to facilitate repacking. Channel sharing is an imperfect solution for any station already facing the disruption of repacking. But in many cases it may help stations in a given market overcome otherwise insurmountable roadblocks. Channel sharing may prove to be a critical tool in overcoming some otherwise insurmountable roadblocks while reducing the time, cost and disruption otherwise arising from the transition. The Commission should also express support for other resource sharing among stations in the same market and in the same daisy chain for purposes of expediting the transition.

Some commenters support the use of temporary channels, while others oppose transition channels. Sinclair recognizes that use of transition channels cuts both ways. They can provide a path through or around otherwise intractable roadblocks. But widespread use of temporary channels would also exacerbate one of the greatest challenges of repacking: too much demand on too few resources at the same time. Sinclair supports limited, tactical use of temporary channels when the proponent is able to make a reasonable showing that use of a temporary channel will speed up the transition overall. In such cases the cost of the temporary channel should be eligible for repacking reimbursement.

Several parties urge the Commission to account for real-world considerations like weather and local zoning restrictions in its phase assignment and scheduling tools.¹⁶ Block Communications argues that the Commission should gather more real-world data before

¹⁵ See, e.g., Competitive Carriers Association Comments at 11-12; California Oregon Broadcasting Comments at 4-6 comments at 4-6; NAB Comments at 4, 12; Cordillera Comments at 17.

¹⁶ See, e.g., Comments of California Oregon Broadcasting 10-11. Many commenters emphasized the need for the Commission to consider the impact of weather-driven delays. See, e.g., American Tower Comments at 7.

assigning phases.¹⁷ Sinclair agrees that the repacking process could ultimately be completed much faster were the Commission to obtain information about the need for local approvals, tower loading conditions and other tenants on towers, the need for FAA approvals, and other knowable information before making phase assignments.

The Commission's Top Priority Should Be to Minimize Disruption to Viewers.

Sinclair agrees with commenters, including the NAB, who take exception to the Commission's decision to make clearing stations from the 600 MHz band at the earliest possible date the highest priority of repacking.¹⁸ The Commission is charged by Congress with enabling the best possible broadcast service. The Spectrum Act did not authorize the Commission to systematically take stations off the air, even temporarily, in order to conduct the auction and repacking. The interests of viewers must be paramount.

CONCLUSION

Eliminating uncertainty and allowing the broadcast distribution infrastructure to stabilize quickly after a significant relocation are critically important both to allow broadcasters to protect the content delivery system and to consumers who rely on consistent service. Doing that safely and in anticipation of real-world impediments is job-one of any planner. The Commission has taken on the mantle of *Planner Extraordinaire*. It cannot force 1,000 gallons of water into a 500 gallon pool. Reasonable, planned accommodations are a necessity.

And as Sinclair noted in its opening comments, the repacking plan expressly relies on cooperation among broadcasters, but creates an enormous disincentive for any broadcaster to make significant concessions for the greater good. In fact, it creates the opposite incentive by

¹⁷ Block Comments at 3-8.

¹⁸ NAB Comments at 18.

threatening a “death penalty” for stations that do not meet their transition deadlines. The Commission should revise the plan to eliminate the extreme disincentive for stations to cooperate with each other. It should also acknowledge that failures will occur and provide a mechanism for adjustments to the schedule for all affected stations. The Commission must clearly state that it will not force stations off the air for delays beyond their control or if they have made concessions in their own progress to facilitate the greater good. Punishing broadcasters with the potential loss of a license based upon clear, documented, and unrefuted record facts that constrain the Commission’s plan and which are beyond the control of any broadcaster defines arbitrary and capricious action. We urge a critical reevaluation.

Respectfully submitted,

/s/
Rebecca Hanson
SVP, Strategy and Policy
Sinclair Broadcast Group, Inc.
1100 Wilson Blvd, Suite 600
Arlington, VA 22209
(703) 236-9236

November 15, 2016